

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEEP ROCKIN, LLC, a Washington limited liability company,

Plaintiff,

V.

9 PIZZA ROCK LV, LLC, a Nevada limited
10 liability company, and PIZZA ROCK, LLC, a
California limited liability company,

Defendants.

Case No. 2:13-cv-02205-JAD-PAL

JOINT [PROPOSED] ELECTRONIC DISCOVERY ORDER

13 In accordance with the Court's minute order of March 28, 2014, Plaintiff Keep Rockin,
14 LLC ("Plaintiff") and Defendants Pizza Rock LV, LLC and Pizza Rock, LLC ("Defendants"),
15 submit the following proposed order governing requests for, and the production of, electronically
16 stored information ("ESI") in this case.

I. MEET-AND-CONFER.

18 On April 4, 2014, the parties conducted a telephonic meet-an-confer to discuss the
19 relevant ESI materials they are likely to have as well as proposals to manage ESI. Plaintiff was
20 represented by Jonathan W. Fountain, Esq. and Michael J. McCue, Esq. of the law firm LEWIS
21 ROCA ROTHGERBER LLP. Defendants were represented by Guy W. Chambers, Esq. of the
22 law firm DUANE MORRIS LLP.

II. ORDER GOVERNING THE PRODUCTION OF ESI.

24 The Court ORDERS as follows:

25 1. This Order supplements all other discovery rules and orders. It streamlines
26 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and
27 inexpensive determination” of this action as required by Federal Rule of Civil Procedure 1.

28 2. This Order may be modified for good cause. The parties shall jointly submit any

1 proposed modifications within 30 days after the Federal Rule of Civil Procedure 16 conference.
2 If the parties cannot resolve their disagreements regarding these modifications, the parties shall
3 submit their competing proposals and a summary of their dispute.

4 3. Costs will be shifted for disproportionate ESI production requests pursuant to
5 Federal Rule of Civil Procedure 26. Likewise, a party's nonresponsive or dilatory discovery
6 tactics will be cost-shifting considerations.

7 4. A party's meaningful compliance with this Order and efforts to promote
8 efficiency and reduce costs will be considered in cost-shifting determinations.

9 5. General ESI production requests under Federal Rules of Civil Procedure 34 and
10 45 shall not include metadata absent a showing of good cause. However, fields showing the date
11 and time that the document was sent and received, as well as the complete distribution list, shall
12 generally be included in the production.

13 6. General ESI production requests under Federal Rules of Civil Procedure 34 and
14 45 shall not include email or other forms of electronic correspondence (collectively "email"). To
15 obtain email parties must propound specific email production requests.

16 7. Email production requests shall only be propounded for specific issues, rather
17 than general discovery of a product or business.

18 8. Email production requests shall be phased to occur after the parties have
19 exchanged initial disclosures. Once the parties have exchanged initial disclosures, each side (*i.e.*,
20 Plaintiff on the one hand, and the Defendants (collectively), on the other hand, may serve up to
21 10 special interrogatories (in addition to the 25 interrogatories permitted each party under Rule
22 33(a) of the Federal Rules of Civil Procedure), upon the other side solely for the purpose of
23 identifying the proper custodians, search terms, and time frames, sufficient to enable the party to
24 frame and propound email production requests.

25 9. Email production requests shall identify the custodian, search terms, and time
26 frame, if known. If not known and/or if not disclosed in response to a special interrogatory, the
27 parties shall cooperate to identify the proper custodians, proper search terms and proper
28 timeframe. .

1 10. Each requesting party shall limit its email production requests to a total of five
2 custodians per producing party for all such requests. The parties may jointly agree to modify this
3 limit without the Court's leave. The Court shall consider contested requests for up to five
4 additional custodians per producing party, upon showing a distinct need based on the size,
5 complexity, and issues of this specific case. Should a party serve email production requests for
6 additional custodians beyond the limits agreed to by the parties or granted by the Court pursuant
7 to this paragraph, the requesting party shall bear all reasonable costs caused by such additional
8 discovery.

9 11. Each requesting party shall limit its email production requests to a total of five
10 search terms per custodian per party. The parties may jointly agree to modify this limit without
11 the Court's leave. The Court shall consider contested requests for up to five additional search
12 terms per custodian, upon showing a distinct need based on the size, complexity, and issues of
13 this specific case. The search terms shall be narrowly tailored to particular issues. Indiscriminate
14 terms, such as the producing company's name or its product name, are inappropriate unless
15 combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A
16 conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows
17 the search and shall count as a single search term. A disjunctive combination of multiple words
18 or phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase
19 shall count as a separate search term unless they are variants of the same word. Use of
20 narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the production and
21 shall be considered when determining whether to shift costs for disproportionate discovery.
22 Should a party serve email production requests with search terms beyond the limits agreed to by
23 the parties or granted by the Court pursuant to this paragraph, the requesting party shall bear all
24 reasonable costs caused by such additional discovery.

25 12. The receiving party shall not use ESI that the producing party asserts is attorney-
26 client privileged or work product protected to challenge the privilege or protection.

27 13. Pursuant to Federal Rule of Evidence 502(d), the inadvertent production of a
28 privileged or work product protected ESI is not a waiver in the pending case or in any other

1 federal or state proceeding.

2 14. The mere production of ESI in a litigation as part of a mass production shall not
3 itself constitute a waiver for any purpose.

4 Dated: this 10th day of April 2014.

5 By: /s/ Jonathan W. Fountain

6 Michael J. McCue
7 Jonathan W. Fountain
LEWIS ROCA ROTHGERBER LLP
3993 Howard Hughes Pkwy.
8 Suite 600
9 Las Vegas, NV 89169-5996
(702) 949-8200 (tel.)
(702) 949-8398 (fax)

10 Attorneys for Plaintiff
11 Keep Rockin, LLC

By: /s/ Guy W. Chambers

Mark A. Steiner
Guy W. Chambers
DUANE MORRIS LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
(415) 957-3000 (tel.)
(415) 957-3001 (fax)

Manita Rawat
DUANE MORRIS LLP
100 North City Parkway
Suite 1560
Las Vegas, NV 89106
(702) 868-2600 (tel.)
(702) 385-6862 (fax)

Attorney for Defendants
Pizza Rock LV, LLC and Pizza Rock, LLC

17 **IT IS SO ORDERED:**

19 
20 UNITED STATES MAGISTRATE JUDGE

21 DATED: April 15, 2014